

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
JOSEPH R. GAINES III**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD70896

DATE: May 4, 2010

Appeal From:

Atchison County Circuit Court
The Honorable Roger M. Prokes, Judge

Appellate Judges:

Division One: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Cynthia L. Martin, Judges

Attorneys:

Shaun J. Mackelprang and Jayne T. Woods, Jefferson City, MO, for respondent.

Brian R. Barjenbruch, Richard "Jake" Jacoby and Michael R. Taylor, Independence, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

**v.
JOSEPH R. GAINES III,**

APPELLANT.

No. WD70896

Atchison County

Before Division One Judges: Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Cynthia L. Martin, Judges

Joseph Gaines appeals from the trial court's judgment finding him guilty of two counts of child molestation in the first degree and one count of statutory sodomy in the first degree after a jury trial. Gaines alleges that the trial court erred: (1) in limiting the scope of his cross-examination of D.T. ("Mother"); (2) in admitting the videotaped interview of J.T.; (3) in admitting expert testimony; (4) in denying his motion for judgment of acquittal at the close of the State's evidence; (5) in denying his motion for judgment of acquittal at the close of all evidence; and (6) in overruling his objection to the State's closing argument.

AFFIRMED.

Division One holds:

(1) Gaines obtained all of the evidence he sought on cross-examination during his case-in-chief. Gaines was not denied his defense. Gaines was not prejudiced by the trial court's erroneous ruling.

(2) The totality of the circumstances indicates that J.T.'s statements had sufficient indicia of reliability. Gaines had the opportunity to confront J.T. about the taped statement and, in fact, questioned J.T. regarding her taped statement during cross-examination. Statements admitted pursuant to section 491.075 do not improperly bolster the victim's trial testimony where they are informal and not planned as a substitute for trial testimony and, therefore, do not have the effect of duplicative testimony.

(3) A specific discussion with J.T. was not required to establish foundation for the expert's generalized testimony. Moreover, as the expert offered no specific testimony about why J.T. delayed reporting, her testimony did not usurp the jury's province to determine the credibility of witnesses.

(4) Gaines waived any claim of error in the denial of his motion for judgment of acquittal at the close of the State's evidence when he subsequently presented evidence on his behalf.

(5) Generally, in sexual offense cases the victim's testimony alone is sufficient to sustain a conviction even if uncorroborated. E.T.'s testimony was sufficient to support Gaines's conviction of child molestation in the first degree and any inconsistencies in E.T.'s testimony were to be weighed by the jury as it assessed E.T.'s credibility. Gaines's claim that the record fails to support that he committed criminal conduct in Atchison County is without merit. Looking at the totality of the circumstances we find no ambiguity as to Gaines's identity. There was sufficient evidence from which the jury could have found beyond a reasonable doubt that Gaines's conduct was for the purpose of sexual gratification.

(6) The State's closing argument was not improper. It was supported by the evidence and it rebutted the defense's argument that Mother improperly manipulated her children.

Opinion by: Cynthia L. Martin, Judge

May 4, 2010

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